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C.R.P(MD)No.158 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.158 of 2022

and

C.M.P.(MD)No.676 of 2022

Periyasamy

... Petitioner/Appellant/ 2nd Defendant

Vs.

1.Saraswathi

2.Lakshmi

3.Kannammal

...Respondents 1 to 3 / Respondents 1 to 3
/Plaintiffs 1 to 3

4.Chinnammal

5.Pappayee

...Respondent 4 & 5/ Respondents 4 & 5
/ Defendants 1 & 3

Meenakshi (died)

6.Surendar

7.Subha

8.Manimegalai

...Respondents 6 to 8 / Respondents 7 to 9
/ Defendants 5 to 7

9.Sellammal

10.Maheswari

11.Gandhimathi

...Respondents 9 & 10/ Respondents 10&11
... 11th Respondent / 12th Respondent

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying this Court to set aside the fair and decreetal order dated 07.04.2021 made in I.A.No.729 of 2018 in A.S.SR.No.9227 of 2018 on the file of the learned District Judge, Karur.



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For Petitioner	: Mr.V.Nagarajan
For R1, R2 & R4	: Mr.S.Gokul Raj
For R3, R5 to R11	: No Appearance

ORDER

This Civil Revision Petition arises out of the fair and decreetal order of the learned District Judge, Karur dated 07.04.2021 made in I.A.No.729 of 2018 in A.S.SR.No.9227 of 2018.

2.The said application is filed to condone the delay of 1048 days in preferring the appeal. The learned counsel for the petitioner would submit that the appellate Judge erred in not considering the matter in proper perspective, when the petitioner has explained the reason. Firstly, they have wrongly approached the trial Court by filing the application for setting aside. Since the petitioner's wife was suffering from cancer and in view of the same, the delay was explained, the Appellate Court ought to have condoned the delay and ought not to have dismissed the case.

3.The learned counsel would further contend that it can be seen that though the decree was passed on merits, the petitioner was not defending the suit and therefore, when the entire decision is ex-parte in nature, one opportunity ought to have been given to the petitioner to contest the case on merits.



4.Per contra, the learned counsel appearing for the respondents 1, 2 and 4 would oppose the prayer and reiterate the counter affidavit filed before the appellate Court as well as the finding arrived by the appellate Court on merits.

5.I have considered the rival submissions made on either side and perused the materials available on the records of the case.

6.The suit is for partition, which is filed between the brothers and sisters and the same is decreed by granting a preliminary decree of 1/8th share in each and for separate possession. The petitioner did not appear before the trial Court and only the 4th defendant alone contested the suit. As against which, appeal is filed. The grounds of appeal filed in appeal memorandum in A.S.SR.No.9227 of 2018, is also filed along with the typed set of papers. As many as 7 grounds raised in the memorandum of appeal are extracted hereunder:

“(1)The judgment of the lower Court is contrary to law, probabilities of the case and weight of evidence.

(2)The lower Court erroneously decreed the suit. The lower Court ought to have dismissed the suit as prayed for.

(3)The observation of the lower Court that the plaintiffs have proved their case that the suit properties are



ancestral properties and they are in joint possession and enjoyment are not correct.

(4)The trial Court has failed to consider that the alleged shares calculated by the plaintiffs according to their case is absolutely wrong.

(5)The trial Court has failed to consider that the plaintiffs have not proved their case properly.

(6)The trial Court has believed the case of the plaintiffs without applying its judicial mind and it has simply carried out the version of the plaintiffs in its judgment, which is incorrect.

(7)The trial Court has not considered Ex.P.1 to P6 properly.

(8)The trial Court has simply carried out the judgment without deeply going into the merits of the case.

(9)The trial Court has not framed proper issues and has not answered to the issues framed by it.”

7.In this background, even taking the averments of face value that the petitioner's wife was suffering from cancer, the trial Court found that the final decree proceedings are going on from the year 2016 and when the petitioner has been served with the notice and participated in the said proceedings, he had only belatedly filed the appeal in the year 2018.



8.In view there of, when the delay is huge ie., 1048 days and when the lower Court has rejected the same, after considering the over-all facts and circumstances of the case, this Court does not see any reason to interfere with. Even before this Court no concrete arguments of prejudice on account of the preliminary decree have been pleaded in any of the grounds raised before the lower appellate Court. Even in the affidavit nothing is pleaded.

9.For all the above reasons, I am unable to interfere with the order of the appellate Court and finding no merits, this Civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2024

NCC:Yes/No

Ns

To

1.The District Judge,
Karur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

D.BHARATHA CHAKRAVARTHY, J.



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